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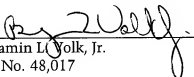
### CERTIFICATE OF E-FILING

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Benjamin L. Volk, Jr.
Reg. No. 48,017

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| In re application of: | : | |
| Weinstock et al. | : | |
| | : | |
| Serial No.: 09/694,050 | : | Examiner: Morgan, Robert |
| | : | |
| Filed: October 20, 2000 | : | Group Art Unit: 3626 |
| | : | |
| For: Extended Web Enabled Business To | : | |
| Business Computer System For Rental | : | |
| Vehicle Services | : | |

### Amended Appeal Brief

Applicant submits the following as its appeal brief in connection with the appeal of the above-referenced patent application.

## Table of Contents:

## List of References:

USPN 5,794,207 (Walker);

"Many Ways to Sell" in Travel Agent, v0, n0, p. 36, October 2, 1995;

USPN 6,125,384 (Brandt); and

USPN 5,182,705 (Barr).

Copies of these references are included herewith as Exhibit D (Walker), Exhibit E ("Many Ways to Sell"), Exhibit F (Brandt), and Exhibit G (Barr) in Section ix.

## Table of Cited Authorities:

*Supreme Court Authority:*

KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)

*Federal Courts Authority:*

Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 227 USPQ 657 (Fed. Cir. 1985)

In re Gordon, 221 USPQ 1125 (Fed. Cir. 1984)

In re Gurley, 31 USPQ2d 1130 (Fed. Cir. 1994)

In re ICON Health and Fitness Inc., 83 USPQ2d 1746 (Fed. Cir. 2007)

In re Kahn, 78 USPQ2d 1329 (Fed. Cir. 2006)

In re Lemin, 150 USPQ 546 (CCPA 1966)

In re Lindell, 155 USPQ 521 (CCPA 1967)

In re McKenna, Redmond, and Smith, 97 USPQ 348 (CCPA 1953)

In re Mercier, 185 USPQ 774 (CCPA 1975)

In re Oelrich and Divigárd, 198 USPQ 210 (CCPA 1978)

In re Sullivan, 84 USPQ2d 1034 (Fed. Cir. 2007)

Takeda Chemical Industries Ltd. v. Alphapharm Pty. Ltd., 83 USPQ2d 1169 (Fed. Cir. 2007)

*Manual of Patent Examining Procedure:*

MPEP §716.01(c))

MPEP §2143.01

i.    **Real Party in Interest:**

    The real party in interest is The Crawford Group, Inc., which is the assignee of the subject application. The Crawford Group, Inc. is the parent company of Enterprise Rent-A-Car Company.

ii.    **Related Appeals and Interferences:**

    This patent application is a continuation-in-part of patent application serial number 09/641,820, now U.S. Patent No. 7,275,038 (the "'038 patent"). On September 24, 2007, plaintiffs The Hertz Corporation and TSD Rental LLC filed a complaint with the United States District Court for the District of Massachusetts seeking a Declaratory Judgment that the '038 patent "is invalid, unenforceable and not infringed by Hertz or TSD". (See Case No. 1:07-cv-11793; currently pending with D. Mass.; filed September 24, 2007). Previously, these same plaintiffs had filed a complaint and declaratory judgment action with the United States District Court for the District of Massachusetts alleging antitrust violations based in part on the 09/641,820 patent application. (See Case No. 1:07-cv-10302; currently pending with D. Mass.). To date, no substantive decisions have been rendered by the district court in these cases.

iii.    **Status of Claims:**

    The current status of the claims is as follows: (1) claims 1-95 stand canceled from the application, and (2) claims 96-136 stand rejected in the application. Applicant appeals the rejection of claims 96-136.

iv.    **Status of Amendments:**

    No amendment has been filed subsequent to the April 5, 2007 Office Action from which appeal has been sought.

v.     **Summary of Claimed Subject Matter:**

The independent claims of this patent application are independent system claim 96 and independent method claim 113.

Independent claim 96 addresses "[a]n Internet-enabled rental vehicle reservation management system". As one component of this system, claim 96 recites "an Internet web portal in communication with the Internet, wherein the Internet web portal is configured for access by an authorized purchaser computer via the Internet to provide a user of the authorized purchaser computer with an ability to book a rental vehicle reservation with any of a plurality of competitive rental vehicle service providers". (See Patent Application; e.g., page 17, lines 21-29; page 8, lines 11-19; Figure 3 (reference number 70)). Claim 96 further recites that this Internet web portal "is configured to provide a plurality of graphical user interface (GUI) menus to the authorized purchaser computer for display thereon, wherein at least one of the GUI menus is configured to accept a selection by the user as to which one of the plurality of competitive rental vehicle service providers that a rental vehicle reservation is to be booked with, and wherein the Internet web portal is further configured to transmit the rental vehicle reservation to the selected one of the competitive rental vehicle service providers". (See Patent Application; e.g., page 16, line 31 – page 17, line 4; page 6, lines 8-13).

As another component of this system, claim 96 recites "a computer network operated by one of the competitive rental vehicle service providers, the computer network being in communication with the Internet web portal, the computer network comprising a mainframe that is configured to execute a rental vehicle software program". (See Patent Application; e.g., page 17, lines 16-20; page 11, lines 14-19; page 12, lines 34-37; Figure 3 (reference numbers 74 and 78); and Figure 2 (middle column (see page 13, lines 16-18))). Claim 96 further recites that "at least one of the GUI menus is configured to interface a user of the authorized purchaser computer with the rental vehicle software program". (See Patent Application; e.g., page 12, line 34 – page 13, line 1; page 13, lines 14-20).

Lastly, claim 96 recites "the rental vehicle software program is configured to (1) automatically book in response to input from the user, a rental vehicle reservation with the competitive rental vehicle service provider that operates the computer network without human intervention on the part of personnel of the competitive rental vehicle service provider that

operates the computer network, and (2) manage the booked rental vehicle reservation in response to input from the user." (See Patent Application; e.g., page 14, line 38 – page 15, line 10; page 13, line 12 – page 14, line 27; Figure 2). As examples of management functionality for booked rental vehicle reservations, the specification describes, inter alia, authorization changes, extensions, and messaging that can be performed through the system throughout the life of a reservation. (See Patent Application; e.g., Figure 2).

Independent method claim 113 pertains to creating and managing rental vehicle reservations. As a step of this method, claim 113 recites "providing an Internet web portal in communication with an authorized purchaser computer via the Internet". (See Patent Application; e.g., page 17, lines 21-29; page 8, lines 11-19; Figure 3 (reference numbers 70, 52, and 54)).

As another step, claim 113 recites "providing a user of the authorized purchaser computer with an option through the Internet web portal to select a rental vehicle service provider with which to book a rental vehicle reservation from among a plurality of competitive rental vehicle service providers". (See Patent Application; e.g., page 16, line 31 – page 17, line 4; page 17, lines 21-29; page 8, lines 11-19). Furthermore, claim 113 recites that "at least one of the competitive rental vehicle service providers maintains a computer network in communication with the Internet web portal, wherein the computer network comprises a rental vehicle software program". (See Patent Application; e.g., page 17, lines 16-20; page 11, lines 14-19; page 12, lines 34-37; Figure 3 (reference number 74); and Figure 2 (middle column (see page 13, lines 16-18)).

Claim 113 further recites various steps that are responsive "to a selection by the user of a competitive rental vehicle service provider that maintains the computer network". These steps include:

"(1) interfacing the user with the rental vehicle software program via a plurality of graphical user interface (GUI) menus that are displayed on the authorized purchaser computer" (See Patent Application; e.g., page 12, line 34 – page 13, line 1; page 13, lines 14-20); and

"(2) receiving input at the Internet web portal from the user through the GUI menus, (3) in response to the received input, providing a series of

commands to the rental vehicle software program, and (4) executing the rental
vehicle software program in response to the series of commands to thereby (a)
automatically book a rental vehicle reservation with the competitive rental
vehicle service provider that maintains the computer network without human
intervention on the part of personnel of the competitive rental vehicle service
provider that maintains the computer network and (b) manage the booked rental
vehicle reservation" (See Patent Application; e.g., page 6, lines 7-13; page 14,
line 38 – page 15, line 10; page 13, line 12 – page 14, line 27; Figure 2).

Lastly, claim 113 recites the step of "in response to a selection by the user of a different
competitive rental vehicle service provider, transmitting a rental vehicle reservation from the
user to the selected different competitive rental vehicle service provider through the Internet
web portal." (See Patent Application; e.g., page 9, lines 3-15; page 16, line 36 – page 17, line
29).

Thus, the inventions defined by independent claims 96 and 113 provide a user with the
ability to book rental vehicle reservations with any of multiple competitive rental vehicle
service providers. Furthermore, the inventions defined by independent claims 96 and 113
provide the user with the ability to control which rental vehicle service provider from among
the plurality of competitive rental vehicle service providers will receive the user's business for
any given transaction. Further still, the inventions defined by independent claims 96 and 113
require that at least one of the competitive rental vehicle service providers operate/maintain a
computer network through which the user (by way of the Internet web portal) can both book a
rental vehicle reservation with that competitive rental vehicle service provider and manage the
booked reservation, all from the user's Internet-connected computer. Further still, through the
invention, when booking a rental vehicle reservation with the competitive rental vehicle service
provider that operates/maintains the computer network, the user can perform such booking
"automatically" and "without human intervention on the part of personnel of the competitive
rental vehicle service provider".

**vi.    Grounds of Rejection to be Reviewed on Appeal:**

I.      Whether claims 96-105, 109[1]-127 and 131-136 are unpatentable under 35 U.S.C. 103 over Walker (USPN 5,794,207) in view of "Many Ways to Sell" by Travel Agent and further in view of Brandt (USPN 6,125,384); and more specifically:

(a) whether claim 96 (including any and all claims dependent therefrom) is obvious in view of the Walker/"Many Ways to Sell"/Brandt combination;

(b) whether claim 113 (including any and all claims dependent therefrom) is obvious in view of the Walker/"Many Ways to Sell"/Brandt combination;

(c) whether claims 115-117 and 124 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt combination;

(d) whether claims 101, 112, and 122 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt combination;

(e) whether claims 102 and 123 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt combination;

(f) whether claims 103 and 125 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt combination; and

(g) whether claims 104 and 126 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt combination.

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[1] Applicant notes that the first line of page 3 of the April 5, 2007 Office Action indicates that claims "107-127" stand rejected for obviousness based on the Walker/"Many Ways to Sell"/Brandt combination. However, because claims 107 and 108 are not specifically addressed in this rejection, because claims 109-127 are specifically addressed in this rejection, and because claims 107 and 108 are specifically addressed in the obviousness rejection based on the Walker/"Many Ways to Sell"/Brandt/Barr combination (see April 5, 2007 Office Action at page 10), Applicant reads the first line on page 3 of the Office Action as a typographical error. As such, for this appeal, Applicant will treat the obviousness rejection based on the Walker/"Many Ways to Sell"/Brandt combination as applying to claims 96-105, _109_-127, and 131-136 rather than claims 96-105, _107_-127, and 131-136.

II.    Whether claims 106-108 and 128-130 are unpatentable under 35 U.S.C. 103 over Walker in view "Many Ways to Sell" further in view of Brandt and further in view of Barr (USPN 5,182,705); and more specifically:

> (a) whether claims 106 and 128 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt/Barr combination;
>
> (b) whether claims 108 and 130 (including any and all claims dependent therefrom) are obvious in view of the Walker/"Many Ways to Sell"/Brandt/Barr combination.

vii.    **Argument:**

Applicant will now address the various rejections made in the April 5, 2007 Office Action and explain why these rejections must be reversed on appeal.

*I.      The Examiner erred in rejecting claim 96 for obviousness based on the combination of the Walker, "Many Ways to Sell", and Brandt references because the Examiner has failed to set forth a valid reason for combining the Walker reference with the "Many Ways to Sell" reference.*

The April 5, 2007 Office Action rejected claim 96 for obviousness based on the combination of the Walker, "Many Ways to Sell", and Brandt references. With reference to claim 96, the April 5, 2007 Office Action states that it would have been obvious to combine Walker's "bilateral buyer-driven commerce method for car rental" with the reservation management system described in the "Many Ways to Sell" reference, "with the motivation of allowing [the] authorized user to provide reliable and dependable service to customer[s] involved in rental car insurance claim[s]." (See April 5, 2007 Office Action; pages 4-5). However, the Office Action fails to sets forth how or why combining Walker's "bilateral buyer-driven method" with the reservation management system described in the "Many Ways to Sell" reference would allow users of the reservation management system "to provide reliable and dependable service" to their customers. While the Supreme Court in KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1395-96 (U.S. 2007) recently cautioned against rigid applications of the "teaching, suggestion, motivation" (TSM) test for obviousness[2], the KSR decision nevertheless states that there must be some rational reason for combining the prior art elements in the manner claimed to support a conclusion of obviousness. KSR, 82 USPQ2d at 1396. Moreover, examiners are required to make such analysis of the prior art explicit in order to facilitate review of their decisions. Id. (citing and quoting In re Kahn, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) ("rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"). As explained in the Kahn case,

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[2]  It should be noted, however, that the KSR decision does recognize the TSM test as being a "helpful insight" into the question of obviousness. KSR, 82 USPQ2d at 1396; see also Takeda Chemical Industries Ltd. v. Alphapharm Pty. Ltd., 83 USPQ2d 1169, 1174 (Fed. Cir. 2007).

when a decisionmaker such as an examiner or the Board of Patent Appeals relies on a conclusory statement regarding the reason for combining prior art references and fails to explain the reasons "that would have lead the skilled artisan at the time of the invention to the claimed combination as a whole, [a court] must infer that the Board [and/or examiner] used hindsight to conclude that the invention was obvious." Kahn, 78 USPQ2d at 1335. Applicant respectfully submits that, in the subject patent application, the Examiner has erred in rejecting claim 96 for obviousness because the Examiner relies on a conclusory and faulty rationale for combining the Walker reference with the "Many Ways to Sell" reference.

Moreover, the unrefuted evidence of record in this patent application establishes that the combination of Walker's bilateral buyer-driven method with the reservation management system of "Many Ways to Sell" would not allow users of the reservation management system "to provide reliable and dependable service" to their customers. (See "Declaration B of David Smith" enclosed herewith as Exhibit A in Section ix). Instead, the unrefuted evidence of record in this patent application demonstrates and explains why the combination of Walker's bilateral buyer-driven method with the reservation management system of "Many Ways to Sell" would drastically reduce the efficiency and hinder the reliability and dependability of the reservation management system of the "Many Ways to Sell" reference. (See Exhibit A; "Declaration B of David Smith"; paragraphs 6-9).

The Walker Reference:

The Walker patent discloses a system designed to allow a buyer to submit a single conditional purchase offer (CPO) to multiple sellers. Walker also discloses a rental vehicle CPO as an example. (See Walker; col. 16, line 6). The CPO details what the buyer wants and the conditions under which the buyer will buy. (See Walker; col. 8, lines 46-56). To effectuate the transaction that is the subject of a CPO, a seller needs to review the CPO and evaluate whether it is worthy of acceptance (i.e., are the price and conditions agreeable to the seller?). (See Walker; col. 9, lines 17-30). Once accepted, the Walker system creates what is deemed to be a legally enforceable contract (reservation) between the buyer and seller. The Walker patent also discloses that the system should provide the seller with the ability to issue a counter-offer to the buyer. (See Walker; col. 22, lines 52-63). There is no teaching present in the Walker patent that describes how the

acceptance process can be automated; <u>that is, under Walker, human intervention is required for a</u>
<u>seller to accept a CPO</u>.

Sellers can obtain CPOs of interest for their review by either browsing a CPO database or by
configuring the system to automatically forward CPOs of interest to them. (See Walker; col. 18,
lines 15-33). Thus, the Walker system relates to a "buyer-driven" market that effectively functions
as a "reverse auction" whereby multiple sellers will presumably compete to accept an offer from a
buyer that is set on the buyer's terms. Essentially, there is a race such that the first seller to accept
the buyer's terms wins the sale. (See Walker; col. 9, lines 24-30). <u>Thus, the buyer does not control,</u>
<u>or select in any meaningful way, the particular seller he wishes to place the reservation with</u>. That
is, the rental vehicle service provider with which the buyer does business is <u>not selected by the</u>
<u>buyer</u>; instead, the rental vehicle service providers select which buyers they want to do business
with.

Moreover, not only is human intervention required before a CPO can be accepted, but also
multiple communications will be necessary in many instances to consummate a reservation with
Walker's buyer-driven market because a buyer's initial CPO may result in a seller counter-offer or
may result in a rejection (in which case a new CPO with altered terms will need to be submitted by
the buyer). (See Walker, col. 18, line 15 – col. 19, line 12; col. 22, line 52 – col. 23, line 16; Figures
10 and 18-19).

<u>The "Many Ways to Sell" Reference:</u>

The "Many Ways to Sell" reference is a 1995 article from Travel Agent that describes
Enterprise Rent-A-Car's then existing "Automated Rental Management System" (ARMS)
(hereinafter the "1995 ARMS system"). (See Exhibit A; "Declaration B of David Smith";
paragraph 4; see also Prosecution History for Patent Application; "Amendment and Response
to 8/15/06 Office Action with RCE" filed December 22, 2006; page 11). The assignee of this
patent application is the parent company of Enterprise Rent-A-Car Company. The 1995 ARMS
system was a business-to-business computer system which allowed insurance companies to create
and manage rental vehicle reservations with Enterprise Rent-A-Car; the 1995 ARMS system was
not Internet-based and was not configured to communicate rental vehicle reservations to a plurality
of competitive rental vehicle service providers. (See Exhibit A; "Declaration B of David Smith";
paragraph 5).

## The Shortcomings of the Examiner's Purported Motivation to Combine Walker's Buyer-Driven Market with the 1995 ARMS System:

The April 5, 2007 Office Action relies upon there being a motivation to incorporate Walker's buyer-driven market into the 1995 ARMS system for "allowing [the] authorized user to provide reliable and dependable service to customer[s] involved in rental car insurance claim[s]." (See April 5, 2007 Office Action; pages 4-5). However, the Office Action fails to provide any evidence or explanation of how such a combination would in fact improve the reliability and/or dependability of service provided to customers through the 1995 ARMS system.

In fact, the unrefuted evidence of record in this patent application establishes that such a combination would not improve the reliability and/or dependability of service provided to customers through the 1995 ARMS system. Indeed, the unrefuted evidence of record establishes that such a combination would negatively impact reliability and dependability for the 1995 ARMS system. Through "Declaration B of David Smith", Applicant has submitted evidence that "a person having ordinary skill in the art would not be motivated to combine the Walker patent with the 1995 ARMS system". (See Exhibit A; "Declaration B of David Smith"; paragraph 6). The "Declaration B of David Smith" further explains in detail the underlying reasons as to why such a motivation does not exist:

> The Office Action states that the motivation to combine the Walker patent with the Many Ways to Sell news snippet is a "motivation of allowing [an] authorized purchaser to provide reliable and dependable service to [a] customer involved in [a] rental car insurance claim." [citation omitted] I disagree with this statement because I conclude that the incorporation of [the] Walker patent's "buyer-driven" market into the 1995 ARMS system would not enhance reliability or dependability. In fact, I fail to see how reliability and dependability would even be positively influenced by the user of a "buyer-driven" market with the 1995 ARMS system.
>
> Moreover, I note that because the "buyer-driven" market of Walker requires human intervention by the seller to review incoming CPOs for an assessment of whether they should be accepted, the incorporation of Walker's "buyer-driven" market into the 1995 ARMS system would *destroy the efficiency of the 1995 ARMS system*. This efficiency arose in large part from the speed and *certainty* with which the insurance company personnel created reservations with Enterprise, and was one of the primary motivating forces leading to its

adoption and success. *If Enterprise personnel were required to review incoming CPOs from insurance company personnel to determine whether to accept the CPO to create a reservation, or whether to reject a patently ridiculous offer, or whether to counter a nearly acceptable offer, this speed and certainty would be lost.* Accordingly, I conclude that a person having ordinary skill in the art would not be motivated to combine the Walker patent with the Many Ways to Sell news snippet. (See Exhibit A; "Declaration B of David Smith"; paragraph 7 (emphases added)).

Thus, because of the time needed to evaluate the CPOs of Walker's buyer-driven market to identify which CPOs are of interest and then decide whether each CPO of interest should be either accepted, rejected, or made the basis for a counter-offer, coupled with the time needed to formulate, negotiate and consummate such counter-offers, a person having ordinary skill in the art would conclude that the reliability and dependability of the 1995 ARMS system would be drastically reduced through the incorporation of Walker's buyer-driven market ideas into the 1995 ARMS system. That is, the reliability and dependability of the 1995 ARMS system depended in no small part on the speed and certainty with which insurance adjusters could create rental vehicle reservations with Enterprise. (See Exhibit A; "Declaration B of David Smith"; paragraphs 5 and 7).

First, if Walker's CPO-based buyer-driven market were combined with the 1995 ARMS system, high levels of underlying uncertainty would be introduced into the business conducted between users of the 1995 ARMS system (e.g., insurance adjusters) and the rental vehicle service provider.[3] Upon submitting a CPO for a rental vehicle reservation through the 1995 ARMS system, the user (e.g., insurance adjuster) would still not know whether in fact he/she has successfully booked a rental vehicle reservation for the third parties on whose behalf the user is

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[3]  While recognizing that a person having ordinary skill in the art is not an "automaton" (see KSR, 82 USPQ2d at 1397), Applicant nevertheless submits that a person of ordinary skill in the art would not be motivated to modify the Walker technology to remove its CPO-based "buyer-driven" market because, as is well-known, if a proposed modification to a prior art reference would render that prior art invention unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 221 USPQ 1125 (Fed. Cir. 1984); *see also* MPEP §2143.01. Accordingly, Applicant respectfully submits that a person of ordinary skill in the art would not be motivated to modify the Walker system so as to eliminate its multicasting of CPOs to multiple vendors because the multicasting of CPOs to multiple vendors serves as the essential purpose of Walker's "buyer-driven" system.

making the reservation. This is because the rental vehicle service providers may still reject the user's CPO after review of the CPO's terms and conditions.

Second, the reliability and dependability of the 1995 ARMS system would be further degraded through its combination with Walker's CPO-based buyer-driven market because of the time delays and inefficiencies that result from the human intervention needed to review incoming CPOs as well as possibly formulate and negotiate counter-offers based on an original CPO. That is, given the high volume nature of the 1995 ARMS system, significant delays would likely be introduced between the time that a CPO is submitted and the time that a reservation based on that CPO is created (if created at all). During this time period of CPO pendency, the insurance adjuster's customers will not have access to a pre-authorized replacement rental vehicle, thereby meaning that the Examiner's proffered combination would render the CPO-based buyer-driven 1995 ARMS system less dependable and less reliable.

In fact, the very "buyer-driven" nature of the Walker system would motivate a skilled person in the art not to incorporate its teachings into the 1995 ARMS system. As noted above, the transformation of the 1995 ARMS system into a buyer-driven system as taught by Walker would severely impact the efficiency of the 1995 ARMS system so as to negate its value. (See Exhibit A; "Declaration B of David Smith"; paragraph 7).

Rather than substantively address the statements made in "Declaration B of David Smith", the Examiner has summarily discounted the sound reasoning presented in this declaration on the grounds of "opinion" and "self-serving" bias. (See Office Action dated August 15, 2006; page 19). However, Applicant respectfully submits that the Examiner committed error when discounting the "Declaration B of David Smith" for these reasons. See In re Sullivan, 84 USPQ2d 1034, 1038 (Fed. Cir. 2007) (reversing the Board for failing to consider evidence submitted by the applicant to counter an obviousness rejection, wherein this evidence included declarations from the inventors as to how a person having ordinary skill in the art would have interpreted the cited prior art).

First, Applicant respectfully submits that it is improper for the Examiner to give no weight to a declaration by a person skilled in the art such as David Smith (see Exhibit A; "Declaration B of David Smith"; paragraphs 1-2) for the reason of mere "opinion" because the statements made by David Smith as to how a person having ordinary skill in the art would

interpret the Walker reference in combination with the 1995 ARMS system include detailed statements based on sound logic as to the underlying reasons why a person having ordinary skill in the art would not be motivated to combine the Walker reference with the 1995 ARMS system for reasons of improved reliability and dependability. (See Exhibit A; "Declaration B of David Smith"; paragraphs 3-7). In the case In re Oelrich and Divigard, 198 USPQ 210 (CCPA 1978), the court reversed the Board's finding of obviousness based on affidavits submitted by the patent applicant. Among these affidavits was an affidavit by a professor of electrical engineering, Kolk, who provided his opinion as to what the cited prior art references taught to those having ordinary skill in the art, wherein this affidavit explained the underlying basis for its opinion. Oelrich, 198 USPQ at 213-214. In response to a finding by the Board that the affidavits related to mere opinion and failed to recite the factual bases for their conclusions, the court stated:

> We believe the board's criticism of the affidavits for failing to recite factual bases for the conclusions reached is unwarranted in this case. The extent noted above, the affidavits of Oelrich and Divigard [the inventors] are based on facts. The Kolk affidavit is grounded, in large part, on technically sound applications of unquestioned physical principles. To the extent that all of the affidavits express opinions, they are the opinions of men conceded to be of ordinary skill in the art based on information uniquely within the competence bearing on the level of ordinary skill in the art at the time the invention was made. Their conclusions are reasonable, and thus more credible, in view of the fact that only a single word ("preferred") in the entire eighteen columns of disclosure in the Oelrich patent is in any way contrary thereto. Id. at 214-15.

After weighing all of the evidence of record in the subject patent application, including the affidavits that the USPTO has previously discounted for being mere opinions, the court concluded that the claimed invention was nonobvious. Id. at 215.

A similar case to Oelrich is the case In re Lemin, 150 USPQ 546 (CCPA 1966). In Lemin, the patent applicant relied on two affidavits when arguing that its claimed invention was not rendered obvious by the prior art. Lemin, 150 USPQ at 547. These two affidavits presented the opinion of a person skilled in the art as to how the prior art would be interpreted by person having ordinary skill in the art. Id. at 547-48. In response to the position by the USPTO that the affidavits should be discounted as mere opinions, the court found that the "affidavits speak for themselves" and that there was "no merit in the Patent Office argument

that the affidavits express mere opinions and do not state facts". Id. at 548. Based in large part on the failure of the USPTO to refute the affidavits, the court reversed the decision of the Board as to the obviousness of the invention. Id. at 549 ("Accepting, as we do, appellant's interpretation of the reference on the basis of **unrefuted affidavits** reciting the technical meaning of the symbology employed, we are of the opinion that the sole reference teaches nothing whatever about the properties, the discovery of which underlies the claimed inventions." (emphasis added)). See also In re Lindell, 155 USPQ 521, 524 (CCPA 1967) (finding that "*some* weight ought to be given to a persuasively supported statement of one skilled in the art on what was not obvious to him").

In this instant case, David Smith is unquestionably a skilled person in the art who has the expertise to speak on the issue of how the cited references would be viewed by those having ordinary skill in the art. (See Exhibit B; "Declaration B of David Smith"; paragraphs 1-5 (pointing out Mr. Smith's extensive years of experience in the art and his instrumental role in the development of the 1995 ARMS system that forms part of the Examiner's rejection)). Also, the "Declaration B of David Smith" provides a detailed explanation at paragraph 7 as to why a person having ordinary skill in the art would not be motivated to combine Walker's CPO-based buyer-driven market method with the 1995 ARMS system because such a combination would result in uncertainty and inefficiency rather than reliability and dependability. The Examiner has failed to substantively refute the rationale set forth in paragraph 7 of the "Declaration B of David Smith"; instead the April 5, 2007 Office Action states in a conclusory and unsupported manner that the combination would result in improved reliability and dependability without any indication of how reliability and dependability would be enhanced by the combination. As such, Applicant respectfully submits that the Examiner erred in rejecting claim 96 for obviousness because the evidence of record in this patent application establishes that when considered as a whole, no motivation existed for combining the Walker reference with the 1995 ARMS system.

Second, Applicant respectfully submits that it is improper for the Examiner to deny weight to a declaration by an inventor for the reason of self-serving bias without substantively addressing the content of the declaration. The "Declaration B of David Smith" was made by one of the joint inventors for this patent application. However, David Smith's status as a joint

inventor does not operate to deny the "Declaration B of David Smith" from receiving any consideration by the Examiner. See In re McKenna, Redmond, and Smith, 97 USPQ 348, 351 (CCPA 1953) (noting that it is improper for the USPTO to disregard an affidavit from an inventor concerning the subject of obviousness solely for reasons of bias); see also MPEP Section 716.01(c)).

Once again, the "Declaration B of David Smith" provides a detailed explanation at paragraph 7 as to why a person having ordinary skill in the art would not be motivated to combine Walker's CPO-based buyer-driven market method with the 1995 ARMS system because such a combination would result in uncertainty and inefficiency rather than reliability and dependability. The Examiner has failed to substantively refute the rationale set forth in paragraph 7 of the "Declaration B of David Smith"; as such, Applicant respectfully submits that the Examiner erred in rejecting claim 96 for obviousness because the evidence of record in this patent application establishes that when considered as a whole, no motivation existed for combining the Walker reference with the 1995 ARMS system.

Therefore, Applicant respectfully submits that the Examiner has failed to establish a prima facie case for the obviousness of claim 96 because the Examiner erred in asserting that a person having ordinary skill in the art at the time of invention would be motivated for reasons of reliability and dependability to combine the Walker reference with the 1995 ARMS system. Accordingly, Applicant respectfully submits that the rejection of claim 96 must be reversed in this appeal.

**II.     The Examiner also erred in rejecting claim 96 for obviousness based on the combination of the Walker, "Many Ways to Sell", and Brandt references because the Examiner has failed to set forth a valid reason for combining the Walker/"Many Ways to Sell" combination with Brandt.**

Applicant further notes that the obviousness rejection of claim 96 depends on the Brandt reference in combination with the Walker and "Many Ways to Sell references. With reference to claim 96, the April 5, 2007 Office Action states that it would have been obvious to combine Brandt's "Flowmark application software" with the combined Walker/1995 ARMS system due to "the motivation of providing a faster and more efficient way to process car rental application without any human intervention." (See April 5, 2007 Office Action; pages 5-6).

However, Applicant has submitted evidence in the form of two declarations - "Declaration of Russell Dittmar" (see Exhibit B in Section ix) and "Declaration B of David Smith" (discussed above) - and one published U.S. patent application – 2002/0091533 (the "IBM/Ims reference" enclosed as Exhibit C in Section ix) – which demonstrate why a person having ordinary skill in the art would be motivated to <u>not</u> combine Brandt's FlowMark application software with the Walker/1995 ARMS system combination. The Examiner has failed to substantively consider this evidence, and in doing so, the rejection of claim 96 is in error. See <u>Sullivan</u>, 84 USPQ2d at 1038.

<u>The Brandt Reference:</u>

Brandt discloses a computer system comprising one or more computers that execute a web browser, a web server application, an application gateway, and a software application, wherein these components are configured such that a user of the web browser application can access the software application by way of the web server application and the application gateway. (See Brandt; Abstract; Figure 3 (reproduced below)). Brandt discloses an embodiment wherein this system is used to book rental vehicle reservations. (See Brandt; col. 14, line 52 et seq.).
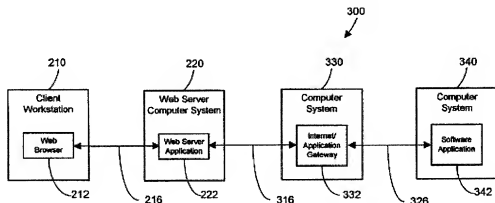


FIG. 3

With reference to Figure 3, the "[w]eb server application 222 is a software program running on web server computer system 200 that allows a user at client workstation 210 to access information controlled by web server 220." (See Brandt; col. 5, lines 38-41).

The "Internet/application gateway 332 acts as a translator/facilitator to allow the request from the user [at the client workstation 210] to be processed by software application 342. Typically this will involve translating URLs, HTML codes, or other user-driven commands into a format or language that can be understood and processed by software application 342." (See Brandt; col. 8, lines 30-35).

> This means that Internet/application gateway 332 is capable of communicating with software application 342 using the native interface of software application 342. The user may access Internet/application gateway 332 via a transparent web client interface. This means that the HTML interface is coded so that the user is unaware that they are interacting with software application 342 through Internet/application gateway 332. The interface of web browser 212 need not disclose the source of the data that is being displayed on client workstation 210. The actual processing and communicating being done by Internet/application gateway 332 may be completely hidden from the user of web browser 212. A transparent user interface can thus be implemented by embedding codes and instructions on the appropriate HTML web pages that appear on client workstation 210. (See Brandt; col. 8, lines 35-50).

The software application 342 is disclosed as "a work flow application known as FlowMark which is programmed to perform a specific function." (See Brandt; col. 10, lines 20-22). In the car rental embodiment, Brandt discloses that the FlowMark software is configured to book rental vehicle reservations with a rental car agency. (See Brandt; col. 14, lines 52 et seq.; Figure 20). This FlowMark software 342 is programmed for "once and done"-type personal use reservation booking; the FlowMark software 342 does not support reservation management after a reservation has been initially created/booked (e.g., providing users with the ability to request and obtain extensions, invoicing, etc.). Furthermore, Brandt indicates that the reservations are personal use reservations. (See Brandt; col. 15, lines 22-44 (stating that the user inputs "his or her" information for creating the reservation)). Further still, while Brandt discloses that many users can access the application gateway and FlowMark application software (see Brandt; col. 10, lines 4-16), Brandt fails to disclose that its system can be configured to accommodate rental vehicle reservations booked with any of a plurality of

different rental vehicle service providers. That is, Brandt discloses a computer system configured for "once and done" creation of personal use rental vehicle reservations <u>with a single rental vehicle service provider.</u>

<u>A Person Having Ordinary Skill in the Art Would NOT have a Valid Reason to Combine Brandt's FlowMark Application Software with the Combined Walker/1995 ARMS System:</u>

The April 5, 2007 Office Action cites Brandt for the use of its FlowMark car rental application software in combination with a CPO-based buyer-driven 1995 ARMS system. The stated motivation for this combination "providing a faster and more efficient way to process car rental application without any human intervention". (See April 5, 2007 Office Action; p. 5-6). However, Applicant respectfully submits that a person having ordinary skill in the art would not have a rational reason or otherwise be motivated to incorporate Brandt's FlowMark software into the combined Walker/1995 ARMS system because of the different business modalities in which each of these systems operate. While Applicant has previously entered evidence in the record on this point in the form of two declarations and one published patent application, the Examiner has improperly refused to consider this evidence for the same reasons expressed above in connection with the "Declaration B of David Smith". More specifically, the Examiner has summarily discounted the sound reasoning presented in these items of evidence on the grounds of "opinion" and "self-serving" bias. (See Office Action dated August 15, 2006; page 19). However, Applicant repeats that it was error for the Examiner to discount this evidence on such grounds.

In the "Declaration of Russell Dittmar", Russell Dittmar, who is a skilled person in the art[4] and who is employed by Applicant, explains why a person having ordinary skill in the art would not be motivated to use Brandt's FlowMark application software in an environment where rental vehicle reservations can be booked with multiple competitive rental vehicle service providers. (See Exhibit B; "Declaration of Russell Dittmar"; paragraph 9). Thus, the "Declaration of Russell Dittmar" presents the statements by a skilled person in the art as to

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[4] Paragraphs 1 and 2 of the "Declaration of Russell Dittmar" point out Mr. Dittmar's extensive experience in the art. As such, Applicant respectfully submits that Mr. Dittmar is unquestionably qualified to speak on the issue of how a person having ordinary skill in the art would interpret the cited references. (See Exhibit B; "Declaration of Russell Dittmar"; paragraphs 1-3).

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why the Brandt's system employing FlowMark software is limited to booking rental vehicle reservations with a single rental vehicle service provider rather than a plurality of competitive rental vehicle service providers.

Furthermore, in the "Declaration of Russell Dittmar", Russell Dittmar explains why a person having ordinary skill in the art would not be motivated to incorporate Brandt's FlowMark application software into a business-to-business e-commerce application such as the 1995 ARMS system. (See Exhibit B; "Declaration of Russell Dittmar"; paragraphs 10-12). To corroborate his opinion that Brandt's FlowMark software is ill-suited for a business-to-business application such as the 1995 ARMS system, the "Declaration of Russell Dittmar" further cites to objective third party evidence in the form of the IBM/Ims reference. (See Exhibit C).

Applicant notes that the 1995 ARMS system was a business-to-business application between Enterprise Rent-A-Car and various insurance companies through which insurance companies could create and manage rental vehicle reservations with Enterprise Rent-A-Car on behalf of their policyholders and other claimants. (See "Many Ways to Sell"; see also Exhibit A; "Declaration B of David Smith"; paragraph 5). However, the IBM/Ims reference at paragraphs 16 and 17, when discussing IBM's FlowMark software, states:

> Another prior art technique that may be used with e-business transactions is to use a software work flow system. Examples include the *FlowMark®* and MQ Workflow products from IBM. ... There are several limitations with using work flow systems, however. The run-time environment of each modeling tool is typically proprietary, *and thus is better suited to use in intra-company applications* where the modeling tool will be readily available *than for use in e-business transactions among different companies*. In addition, work flow modeling tools tend to use proprietary data formats, *which are also not well suited to the needs of e-business in an open distributed networking environment*. Furthermore, user code must typically be plugged in to a complex and proprietary object model when using work flow modeling tools (often requiring the writing of application-specific integration code), in order to provide an executable application. (See Exhibit C; IBM/Ims Reference; paragraph 16 (emphases added)).

Thus, the Examiner has taken the position that a person having ordinary skill in the art would be motivated to incorporate IBM's FlowMark software into the business-to-business 1995 ARMS system that conducts e-commerce between insurance companies and a rental vehicle

service provider <u>even though IBM (which is the assignee of record for both the Brandt reference</u>
<u>and the IBM/Ims reference) has explicitly stated that FlowMark software is ill-suited for such</u>
<u>purposes.</u>[5] Applicant respectfully submits that it is error for the Examiner to assert that a
person having ordinary skill in the art would be motivated to use the FlowMark software in a
manner that even IBM, the provider of FlowMark software, teaches away from. The
"Declaration of Russell Dittmar" provides the additional evidentiary support of a skilled artisan
that a person having ordinary skill in the art would not be motivated to apply Brandt's
FlowMark software in a business-to-business application such as the 1995 ARMS system in
view of the IBM/Ims reference's teaching that the FlowMark software is ill-suited for business-
to-business applications. (See Exhibit B; "Declaration of Russell Dittmar"; paragraphs 9-11).

The evidentiary record as to the shortcomings of the Brandt reference in combination
with the Walker and "Many Ways to Sell" references is further enhanced by the "Declaration B
of David Smith". At paragraph 9, David Smith states his opinion as a skilled artisan (and in
agreement with Russell Dittmar) that:

> [B]ecause of the inter-company aspect of the insurance-based replacement rental
> car reservations business modality (which requires effective communications
> and data flow between the insurance company and multiple rental car service
> providers), the incorporation of business processes for a personal use rental car
> reservation system such as the one disclosed in Brandt would be ineffective. As
> noted in paragraphs 10 and 11 of the Russell Dittmar declaration, the assignee
> of the Brandt system itself recognizes that the suitability of Brandt's technology
> does not extend to inter-company data communications. Accordingly, a person
> of ordinary skill in the art would not be motivated to incorporate Brandt's
> technology into a business environment for this even Brandt's assignee believes
> the technology to be unsuitable. Simply put, I conclude that a person having
> ordinary skill in the art would not be motivated to apply Brandt's technology in
> an environment such as that of the claimed invention because the Brandt

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[5] Moreover, the Examiner not only alleges that a person having ordinary skill in the art would be
motivated to incorporate Brandt's FlowMark software into a business-to-business application but further
still use Brandt's FlowMark software in a combination to thereby yield a business-to-<u>multi</u>business
application that coordinates communications not only a customer business and a vendor business
but also other competitive vendor businesses. <u>As noted, IBM, the provider of FlowMark software and the</u>
<u>assignee of record for the Brandt patent itself admits that FlowMark is not well-suited for the very</u>
<u>environments in which the Examiner alleges it would be obvious to employ Brandt's FlowMark software.</u>

system is not capable of operating effectively within that environment. (See Exhibit A; "Declaration B of David Smith; paragraph 9).

Rather than substantively address this evidence, the Examiner discounted the "Declaration of Russell Dittmar" (including the IBM/Ims reference cited and discussed therein) and the "Declaration B of David Smith" solely on the grounds of mere "opinion" and "self-serving" bias. (See Office Action dated August 15, 2006; page 19). However, as explained above, it was error for the Examiner to discount this evidence for such reasons. See In re Oelrich and Divigard, 198 USPQ 210, 214-15 (CCPA 1978); In re Lemin, 150 USPQ 546, 548-549 (CCPA 1966); and In re McKenna, Redmond, and Smith, 97 USPQ 348, 351 (CCPA 1953) (discussed above)). Furthermore, as to the Examiner's conclusory and unsupported allegation of "self-serving" bias in these declarations, Applicant notes that the IBM/Ims reference serves as objective third-party evidence that corroborates the statements made in the declarations as to how the Brandt reference would be interpreted by those having ordinary skill in the art. Applicant respectfully submits that the Examiner's refusal to consider this evidence constitutes reversible error. See Sullivan, 84 USPQ2d at 1038.

The Evidence As A Whole Establishes That a Person Having Ordinary Skill in the Art Would NOT have a Rational Reason or Otherwise be Motivated to Combine the Cited References:

Further still, the Examiner has failed to substantively address other statements in the "Declaration B of David Smith" as to why persons having ordinary skill in the art would not be motivated to combine the Walker reference , the 1995 ARMS system, and the Brandt reference. Namely, additional considerations that establish the lack of desirability for combining these references are: (1) by combining Walker's CPO-based buyer-driven market with the 1995 ARMS system and the Brandt reference, the customer will lose the ability to select which of the competitive rental vehicle service providers will receive its business, and (2) the different business modalities within which these different references operate dictate against their combination with each other.

As explained in the Declaration B of David Smith, one important consideration in the design of a reservation management system is to allow authorized purchasers to book rental vehicle reservations with a specific rental vehicle service provider of their choice. However, if

the 1995 ARMS system were combined with the Walker CPO-based buyer-driven market

system, an insurance adjuster would lose his ability to choose the rental car company he/she

wanted to handle a given reservation because, with Walker's system, the customer does not

choose the rental vehicle service provider; instead the rental vehicle service provider chooses

the customer. (See Exhibit A; "Declaration B of David Smith"; paragraph 9).

> For example, as noted above in connection with paragraph 7, because of
> the high volume nature of business modalities associated with the 1995 ARMS
> system and because of the business considerations involved therein, a buyer-
> driven system of submitting buyer-specified CPOs for seller review, possibly
> resulting in either outright rejection or counteroffers from the sellers, would be
> cumbersome and inefficient in the context of processing insurance-based
> replacement rental car reservations. Not only would such a system require an
> inordinate amount of seller time to review, analyze, and then respond to CPOs,
> it would also at least double, and probably even triple or more the number of
> communications needed merely to place each reservation. *Furthermore, and
> even more importantly, a buyer would lose his "mastery over his offer" in that
> he would be unable to effectively control what rental car company would be
> fulfilling his CPO.* The successful seller is the one who first accepts the offer.
> While the buyer would get his "price", in many instances lowest price is not the
> controlling factor in selecting a rental car provider. *The quality of service
> provided at a particular facility, the condition of the cars, and feedback from
> either happy or unhappy insureds would be given weight, if not controlling
> weight, in whether a particular rental car company should get his business.*
> Accordingly, I conclude that a person of ordinary skill in the art would not
> possess a motivation to incorporate the Walker "buyer-driven" CPO market
> technology into a high volume, seller selecting, insurance-based replacement
> rental car reservation management system. (See Exhibit A; "Declaration B of
> David Smith"; paragraph 7 (emphases added)).

Thus, the "Declaration B of David Smith" establishes that if Walker's CPO-based buyer-driven

market were to be incorporated into the 1995 ARMS system in combination with Brandt's

FlowMark software, then users such as insurance companies would be severely disadvantaged

because they would lose control over various quality of service aspects of the rental process.

That is, an insurance company has a strong motivation and desire to ensure that its customers

(who will be the drivers of the rental vehicles) receive a high quality of service from the rental

vehicle service provider as well as clean and safe rental vehicles from the rental vehicle service

provider. (See Exhibit A; "Declaration B of David Smith"; paragraph 7). However, with

Walker's CPO-based buyer-driven market, insurance companies will not be able to ensure that

their customers receive such high quality rental services because they will lose their ability to select which rental vehicle service provider gets its business based on an assessment of which rental vehicle service providers provide the best overall service.

Furthermore, as noted in paragraphs 8 and 9 of the "Declaration B of David Smith", there are vast differences between the business modalities of the Walker patent (a "buyer-driven" modality designed to implement a reverse auction), the Brandt patent (a modality by which a web user can book reservations for personal use), and the 1995 ARMS system (a modality in which an insurance company buyer can remotely create and manage a high volume of reservations with a buyer-selected rental car service provider on behalf of insured policyholders). Accordingly, a person of ordinary skill in the art would not choose to combine the business processes of these disparate references because each of these business modalities possesses its own unique set of business considerations, many of which are conflicting with the business considerations of the other business modalities.

For example, as noted above, because of the high volume nature of business modalities such as the 1995 ARMS system and because of the business considerations involved therein, a buyer-driven system of submitting buyer-specified CPOs for seller review, possibly resulting in counter-offers from the sellers, would be cumbersome and inefficient in the context of processing insurance-based replacement rental car reservations. This modification would actually increase substantially the volume of communications, the required amount of human involvement needed to analyze the CPOs, and lower the throughput capability. Furthermore, as explained above, the buyer loses "mastery over his offer" and the ability to control which rental car company gets the reservation. Instead, the first seller to accept gets the reservation. (See Walker, col. 9, lines 17-30; col. 19, lines 13-28.) This effectively removes one of the important controls any high volume buyer has over any seller, that of curtailing or even losing all future business for failure to "satisfy" the buyer. Accordingly, a person of ordinary skill in the art would **not** possess a motivation to incorporate the Walker "buyer-driven" CPO market technology into a high volume, buyer selected, insurance-based replacement rental car reservation management system. (See Exhibit A; "Declaration B of David Smith"; paragraph 9).

Further, because of the *inter-company* aspect of the insurance-based replacement rental car reservations business modality (which requires effective communications and data flow between the insurance company and multiple rental car service providers), the incorporation of business processes for a personal use rental car reservation system such as the one disclosed in Brandt would be ineffective. As noted above, the assignee of the Brandt system itself recognizes that the suitability of Brandt's technology does not extend to inter-company data communications. Accordingly, a person of ordinary skill in the art would not be motivated to incorporate Brandt's technology into a business environment for which even Brandt's assignee believes the technology to be unsuitable. Simply put, a person having ordinary skill in the art would not be motivated to apply Brandt's technology in an environment such as that of the claimed invention because the Brandt system is not capable of operating effectively within that environment.

As is well-settled, "*all* of the relevant teachings of the cited references must be considered in determining what they fairly teach to one having ordinary skill in the art. [citations omitted] The relevant portions of a reference include not only those teachings which would suggest particular aspects of an invention to one having ordinary skill in the art, but also those teachings which would lead such a person away from the claimed invention." In re Mercier, 185 USPQ 774, 778 (CCPA 1975) (emphasis in original) (*see also* Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 227 USPQ 657,667, 669, fn 33 (Fed. Cir. 1985) (finding error by the district court where the district court's obviousness analysis used the claims as blueprint and failed to give "due consideration for teachings in [the prior art] references that would have led one skilled in the art to find it improper to combine [the prior art] references") A failure to heed these mandates results in an improper obviousness rejection of a claim based on selective hindsight wherein Applicant's claims are used against him as a map to navigate through isolated and unrelated disclosures in the prior art. Under this standard, Applicant notes that no teachings or rationale can be found in the evidence of record, expressly or implicitly, or in the Office Action, that would lead one of ordinary skill in the art to modify the cited references to arrive at the limitations of claim 96. In fact, as discussed above, the teachings in these references would discourage such a person of ordinary skill in the art from

combining the cited references because of the disparate nature of the business environments in which the systems of those references operate.

Therefore, for all of the foregoing reasons, Applicant respectfully submits that the Examiner's obviousness rejection of claim 96 is in error because a person having ordinary skill in the art would not have found it obvious to combine the cited references in the manner suggested by the Office Action.

**III.     *Even assuming arguendo that a motivation existed for combining the Walker, "Many Ways to Sell" and Brandt references, the Examiner erred in rejecting claim 96 for obviousness because the resultant combination of Walker, "Many Ways to Sell" and Brandt still would fail to yield all limitations of claim 96 – namely, the resultant combination would fail to disclose, teach or suggest both (1) the limitation in claim 96 which requires that rental vehicle reservations be created "automatically" and "without human intervention on the part of personnel of the competitive rental vehicle service provider", and (2) the limitation in claim 96 which requires that the user be given the ability to make "a selection ... as to which one of the plurality of competitive rental vehicle service providers that a rental vehicle reservation is to be booked with".***

The Supreme Court recently reinforced that the *Graham* factors still lay the framework for addressing the question of whether a claimed invention is obvious. KSR, 82 USPQ2d at 1391. These factors are:

> 1)  "the scope and content of the prior art";
> 2)  the "differences between the prior art and the claims";
> 3)  "the level of ordinary skill in the pertinent art"; and
> 4)  objective evidence of nonobviousness.
> Takeda Chemical Industries Ltd. v. Alphapharm Pty. Ltd., 83 USPQ2d 1169,
> 1174 (Fed. Cir. 2007) (quoting KSR).

As to the first *Graham* factor, Applicant notes that, even if the Examiner were correct in finding a motivation to combine the cited prior art references, the combination of Walker, the 1995 ARMS system, and Brandt would result in a computer system whereby a user submits CPOs for rental vehicle reservations to multiple competitive rental vehicle service providers through a version of the 1995 ARMS system that is configured with Brandt's FlowMark software. However, critical to the obviousness analysis is that, as explained above, Walker's CPO-based buyer-driven market requires human intervention on the part of personnel of the competitive rental vehicle service providers because such personnel are needed to evaluate

incoming CPOs to identify CPOs of interest and determine whether the CPOs of interest should be accepted, rejected, or the subject of a counter-offer. (See Walker; col. 9, lines 17-30; col. 22, lines 52-63). Another critical aspect of the purported Walker/1995 ARMS system/Brandt combination is that the customer will <u>not</u> have the ability to select which of the plurality of rental vehicle service providers will receive its business; instead, customers will multicast CPOs to multiple rental vehicle service providers, and then the rental vehicle service providers will select the customers with which they want to do business.

As to the second *Graham* factor, Applicant notes that claim 96 requires both (1) that rental vehicle reservations be created "automatically" and "without human intervention on the part of personnel of the competitive rental vehicle service provider", and (2) that the user be given the ability to make "a selection ... as to which one of the plurality of competitive rental vehicle service providers that a rental vehicle reservation is to be booked with". As explained above, both of these features are absent from the Examiner's purported combination of prior art references.

As to the third *Graham* factor, Applicant notes that the only evidence of record in this patent application explains why a person having ordinary skill in the art would <u>not</u> find it obvious to combine the cited prior art references to yield the invention of claim 96. The Examiner has provided neither evidence nor a rationale in the April 5, 2007 Office Action that explains why it would have been obvious for a person having ordinary skill in the art at the time of invention to bridge the gaps between the Examiner's purported combination and the invention of claim 96. In fact, the April 5, 2007 Office Action recognizes each of the Walker reference and the 1995 ARMS system "fails to teach" (1) that rental vehicle reservations be created automatically and without human intervention on the part of personnel of the competitive rental vehicle service provider, and (2) that the user be given the ability to make a selection as to which one of the plurality of competitive rental vehicle service providers that a rental vehicle reservation is to be booked with. (See April 5, 2007 Office Action; pages 3-5). However, the Examiner fails to explain how the level of ordinary skill in the art bridges these gaps to render claim 96 obvious, even when considering the Walker reference and "Many Ways to Sell" reference in combination with Brandt.

As to the limitations in claim 96 that require automated reservation booking without human intervention on the part of personnel of the rental vehicle service provider, the Examiner cites to Brandt without explaining how the technology of Brandt can be configured to automatically process CPOs without human intervention. Instead, Brandt describes how a reservation request based on the reservation form of Figure 8 can be processed. Thus, even assuming arguendo that a person having ordinary skill in the art would be motivated to incorporate Walker's CPO-based buyer-driven market into a version of the 1995 ARMS system that employs Brandt's FlowMark software to thereby distribute CPOs to a plurality of competitive rental vehicle service providers, the Examiner has failed to explain how a person having ordinary skill in the art would configure the FlowMark software to automatically process CPOs. Brandt merely states:

> *[S]ome* process models 440 may model an activity as a completely automatic process which runs to completion without any human intervention. *Alternatively, a process model 440 may require extensive human input and intervention before it finishes the model process.* (See Brandt; col. 17, lines 55-59 (emphasis added)).

Applicant respectfully submits that this vague statement is insufficient to lead one of ordinary skill in the art to the conclusion that Walker's CPOs are to be processed to create rental vehicle reservations automatically and without human intervention on the part of personnel of the rental vehicle service provider. Given Brandt's recognition that some business processes will "require extensive human input and intervention" in combination with Walker's teaching that human intervention by a seller is required to review incoming CPOs to identify which CPOs are of interest, and for the CPOs of interest, evaluate whether they should be accepted, rejected, or made the subject of counter-offers, Applicant respectfully submits that the Office Action has failed to bridge the gap between claim 96 and the cited references with respect to the claim limitations which require rental vehicle reservations to be booked automatically and without human intervention on the part of personnel of the rental vehicle service provider. Instead, a person having ordinary skill in the art would interpret col. 17, lines 55-59 of Brandt as confirming that a FlowMark software model for seller review of Walker's CPOs will require human intervention on the part of the seller.

Moreover, as to the limitation that requires the user be given the ability to make a selection as to which one of the plurality of competitive rental vehicle service providers that a rental vehicle reservation is to be booked with, the Examiner has failed to identify at all how Brandt renders such a feature obvious. (See April 5, 2007 Office Action, pages 5-6). After recognizing that Walker and the 1995 ARMS system fail to teach this limitation of the claims, the Examiner does not even assert that Brandt fills this gap. This is understandable, as Brandt describes an application whereby users can book rental vehicle reservations with only a single rental vehicle service provider. Accordingly, Applicant respectfully submits that the Examiner also committed error in rejecting claim 96 for obviousness because the Office Action fails to explain how the cited prior art references render obvious the claim limitation which requires the user be given the ability to make a selection as to which one of the plurality of competitive rental vehicle service providers that a rental vehicle reservation is to be booked with.

Therefore, Applicant asserts that the Examiner's rejection of claim 96 must be reversed on appeal because the Examiner has failed to explain how the level of ordinary skill in the art at the time of the invention was sufficient to bridge the gaps between the Examiner's purported combination of prior art reference and all limitations of claim 96.

As to the fourth *Graham* factor, Applicant notes that the objective evidence of record in this patent application further demonstrates the nonobviousness of claim 96. As explained above, Applicant has submitted two declarations and one published patent application as evidence that explains how the prior art actually leads a person having ordinary skill in the art away from the claimed invention. The Examiner has failed to refute this evidence of a "teaching away" in the art. "'A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'" In re ICON Health and Fitness Inc., 83 USPQ2d 1746, 1751 (Fed. Cir. 2007) (citing KSR and quoting In re Gurley, 31 USPQ2d 1130 (Fed. Cir. 1994)). Applicant notes that the unrefuted evidentiary record for this patent application establishes that persons having ordinary skill in the art would be discouraged from combining the cited prior art references together because:

- the use of Walker's CPO-based buyer-driven market system in combination with the 1995 ARMS system and Brandt software would render the users of the 1995 ARMS system <u>uncertain</u> as to whether they have successfully booked a rental vehicle reservation for their drivers because their CPOs may still be rejected by the competitive rental vehicle service providers,

- the use of Walker's CPO-based buyer-driven market system in combination with the 1995 ARMS system and Brandt software would <u>destroy the efficiency</u> of the 1995 ARMS system (1) because each CPO from the user will require human intervention on the part of the competitive rental vehicle service providers to identify whether the CPOs are of interest and whether the CPOs of interest should be accepted, rejected, or made the subject of a counter-offers and (2) because further intervention may be needed by the users of the 1995 ARMS system to evaluate any counter-offers received from the rental vehicle service providers,

- the use of Walker's CPO-based buyer-driven market system in combination with the 1995 ARMS system and Brandt software would cause the users of such a combined system to <u>lose the "mastery of their offers"</u> because the rental vehicle service providers will select the users with which they want to do business rather than the users selecting the rental vehicle service providers with which they want to do business, and

- Brandt's FlowMark software is ill-suited for use in a business-to-multibusiness application, as recognized by IBM, the provider of the FlowMark software.

Therefore, not only would a person having ordinary skill in the art not have a rational reason or be motivated to combine the cited prior art references together in the manner asserted by the Examiner, but even if such a combination were made, the combination would still fail to yield all limitations of claim 96. Accordingly, Applicant respectfully submits that the evidentiary record for this patent application, taken as a whole, commands the conclusion that the invention of claim 96 (and all claims dependent therefrom) would not have been obvious to a person having ordinary skill in the art at the time of the invention.

**IV. The Examiner also erred in rejecting independent method claim 113 for obviousness based on the Walker, "Many Ways to Sell", and Brandt references.**

The Examiner rejected claim 113 for obviousness on the same grounds as claim 96. Similar to claim 96, claim 113 also includes limitations that require "providing a user of the authorized purchaser computer with an option through the Internet web portal to select a rental vehicle service provider with which to book a rental vehicle reservation from among a plurality of competitive rental vehicle service providers" and "executing the rental vehicle software program in response to the series of commands to thereby (a) automatically book a rental vehicle reservation with the competitive rental vehicle service provider that maintains the computer network without human intervention on the part of personnel of the competitive rental vehicle service provider that maintains the computer network". As such, Applicant respectfully submits that the obviousness rejection of claim 113 (and all claims dependent therefrom) must be reversed on appeal for the same reasons set forth above in connection with claim 96.

**V. The Examiner erred in rejecting method claims 115-117, 124, and 128 for obviousness based on the Walker, "Many Ways to Sell", and Brandt references.**

Claim 115 further limits the method of claim 114 to uses where the authorized purchaser is a "business organization that books and manages replacement rental vehicle reservations on behalf of a plurality of third party renters." Method claim 124 recites that the "users comprise users from different insurance companies." Method claim 128 recites that a "common business organization" operates the authorized purchaser computers. Thus, claims 115, 124, and 128 further define the business-to-multibusiness nature of the invention. Claim 116 further refines the method claim 115 by reciting an insurance company as the business organization. Claim 117 further refines the method of claim 116 by stating that "the user comprises an insurance adjuster". As noted above, the unrefuted evidence of record in this patent application demonstrates that a person having ordinary skill in the art would have found Brandt's FlowMark software ill-suited for use in such a business-to-business e-commerce application. As such, the nonobviousness of the invention is further enhanced by claims 115-117, 124, and 128 because the evidence of record shows that persons having ordinary skill in

the art would have been discouraged from employing Brandt's FlowMark software in a business-to-multibusiness method as that of claims 115-117, 124, and 128.

**VI. The Examiner erred in rejecting claims 101, 112, and 122 for obviousness based on the Walker, "Many Ways to Sell", and Brandt references.**

Claim 101 recites "a second one of the computer networks" that was recited in claims 96 and 97, wherein this "second one of the computer networks is operated by a different one of the competitive rental vehicle service providers". (See Patent Application; e.g., page 9, lines 9-12; page 17, lines 10-15). Thus, claim 101 defines an invention wherein users can selectively access the computer networks of multiple competitive rental vehicle service providers through a common Internet web portal to access the rental vehicle software programs on those respective computer networks to automatically book rental vehicle reservations and manage the booked rental vehicle reservations. Having failed to explain how the cited references render obvious the concept of claim 96 when claim 96 recites only "at least one" of such computer networks, the Examiner has also failed to explain how the cited references render obvious the concept of making two such computer networks available to users through a common Internet web portal. Instead, the Examiner merely cites to passages in Walker that identify different seller interfaces which may access the CPO database. (See April 5, 2007 Office Action; pages 7-8). The Examiner has failed to explain how such seller interfaces include all of the features recited in claim 101 (and its antecedent claims) for the "computer networks". Claims 112 and 122 recite similar limitations as claim 101; as such, the Examiner's obviousness rejection as to claims 112 and 122 is likewise without merit.

**VII. The Examiner erred in rejecting claims 102 and 123 for obviousness based on the Walker, "Many Ways to Sell", and Brandt references.**

Claim 102 recites that the Internet web portal is configured to customize the "GUI menus on a per authorized purchaser computer basis". Claim 123 recites the step of "customizing the GUI menus on a per user basis". (See Patent Application; e.g., page 8, line 31 – page 9, line 2). The Examiner contends that these features of the claims are taught by Brandt. (See April 5, 2007 Office Action; pages 8 and 10 (citing col. 14, line 53 – col. 15, line 37 of Brandt)). However, Applicant interprets col. 14, line 53 through col. 15, line 37 of Brandt

as teaching that the same "rental reservation form" on the rental agency's website will be presented to the user regardless of who the user is. As such, Applicant respectfully submits that the Examiner erred in rejecting claims 102 and 123 for obviousness because the Examiner's stated rationale for the rejection fails to identify how the recited features of GUI menu customization on a "per authorized purchaser computer basis" or a "per user basis" is met by the cited references. As such, Applicant respectfully submits that the obviousness rejections of claims 102 and 123 must be reversed on appeal.

**VIII.  The Examiner erred in rejecting claims 103 and 125 for obviousness based on the Walker, "Many Ways to Sell", and Brandt references.**

Claim 103 recites that the Internet web portal is "configured to provide a user of the authorized purchaser computer with a single set of GUI menus for booking a rental vehicle reservation with all of the competitive rental vehicle service providers". Claim 125 recites the step of "providing the user with a single set of GUI menus through the Internet web portal for booking a rental vehicle reservation with all of the competitive rental vehicle service providers". (See Patent Application; e.g., page 17, lines 26-29). The Examiner contends that these features of the claims are taught by Brandt. (See April 5, 2007 Office Action; pages 8 and 10 (citing col. 14, line 53 – col. 15, line 37 of Brandt)). However, Applicant interprets col. 14, line 53 through col. 15, line 37 of Brandt as teaching the "rental reservation form" on the rental agency's website is pertinent to booking a reservation <u>only</u> with the rental agency that operates the website. Brandt fails to disclose, teach, or suggest the same "rental reservation form" can be used by the user to book a rental vehicle reservation with any of a plurality of competitive rental vehicle service providers. The Examiner has pointed to no rationale for extending Brandt's "rental reservation form" for use with a plurality of different competitive rental agencies. As such, Applicant respectfully submits that the Examiner erred in rejecting claims 103 and 125 for obviousness because the Examiner's stated rationale for the rejection fails to identify how the same rental reservation form can be extended to work toward the end of booking a rental vehicle reservation with any of multiple competitive rental vehicle service providers. As such, Applicant respectfully submits that the obviousness rejections of claims 103 and 125 must be reversed on appeal.

## IX. The Examiner erred in rejecting claims 104 and 126 for obviousness based on the Walker, "Many Ways to Sell", and Brandt references.

Claim 104 recites that the Internet web portal is "configured to accommodate a plurality of varying data requirements for rental vehicle reservations with the competitive rental vehicle service providers". Claim 126 recites the step of "accommodating through the Internet web portal a plurality of varying data requirements for rental vehicle reservations with the competitive rental vehicle service providers". (See Patent Application; e.g., page 9, lines 3-7; page 17, lines 29-34). The Examiner contends that these features of the claims are taught by Brandt. (See April 5, 2007 Office Action; pages 8 and 10 (citing col. 14, line 53 – col. 15, line 37 of Brandt)). However, as stated above in connection with claims 103 and 125, Applicant interprets col. 14, line 53 through col. 15, line 37 of Brandt as teaching the "rental reservation form" on the rental agency's website is pertinent to booking a reservation only with the rental agency that operates the website. Thus, Brandt is disclosed as a system that is capable of booking a rental vehicle reservation with only a single rental agency, and as such fails to even contemplate the ability to configure an Internet web portal to accommodate the varying data requirements for booking rental vehicle reservations with any of a plurality of different rental vehicle service providers. The Examiner has pointed to no rationale for how Brandt's system can be extended to work with the varying data requirements of a plurality of competitive rental vehicle service providers. Therefore, Applicant respectfully submits that the obviousness rejections of claims 104 and 126 must be reversed on appeal.

## X. The Examiner erred in rejecting claims 106 and 128 for obviousness based on the Walker, "Many Ways to Sell", Brandt, and Barr references.

Claim 106 recites that "the Internet web portal is configured to create a plurality of workgroups of users, wherein each workgroup shares a workload of management function actions". Claim 128 recites the steps of "creating and administering a plurality of workgroups, wherein each workgroup comprises a plurality of users, and wherein each workgroup shares a workload of management functions for rental vehicle reservations among its users", and "providing a GUI menu ... that presents each user with an action item list that identifies a plurality management function actions for rental vehicle reservations that have been assigned to the user's workgroup". (See Patent Application; e.g., page 9, lines 23-34). The Examiner

admits that these features are not taught by the Walker/"Many Ways to Sell"/Brandt combination, but contends that the Barr reference renders these features obvious. (See April 5, 2007 Office Action; pages 10-12).

Barr discloses a system for managing the insurance claims processing workflow among different employees of an insurance company. Barr is silent with respect to the replacement reservation management aspect of processing auto insurance claims, but does disclose a security arrangement where a "Staff Table" stored by the system is configured to limit the actions that different employees may take on claims files. (See Barr; col. 7, lines 3-16; col. 7, lines 62-66; col. 10, line 44- col. 11, line 1; col. 11, lines 57-63; and col. 31, lines 24-65). Barr further discloses that claims handling tasks can be assigned and reassigned by supervisors to supervisor-selected employees. (See Barr; col. 4, lines 12-17; col. 7, lines 17-24; col. 61, lines 61-66; and col. 22, line 61 – col. 2, line 49). Relative to claims 106 and 128, however, Applicant notes the Examiner cites to no passage in Barr which indicates that the actions assigned to a staff member by a supervisor can be performed by any staff member within a workgroup of staff members. That is, the Examiner has failed to explain how Barr discloses, teaches or suggests the concept of a workload of management functions that are <u>shared</u> by a plurality of users such as claims adjusters. As such, Applicant respectfully submits that the Examiner has failed to set forth how the Barr reference in combination with the other cited references renders obvious the concept of system where a plurality of users in a workgroup <u>share</u> a workload of management functions amongst themselves, as required by claims 106 and 128.

## XI. The Examiner erred in rejecting claims 108 and 130 for obviousness based on the Walker, "Many Ways to Sell", Brandt, and Barr references.

Claim 108 recites that the authorization limit placed on users "includes a financial commitment <u>dollar limit</u> that a user can make on rental vehicle reservations <u>over a specified time period</u>." Claim 130 recites the step of "imposing a financial commitment <u>dollar limit</u> that a user can make on rental vehicle reservations <u>over a specified time period</u>.". (See Patent Application; e.g., page 10, lines 5-12). The Examiner admits that these features are not taught by the Walker/"Many Ways to Sell"/Brandt combination, but contends that the Barr reference renders these features obvious. (See April 5, 2007 Office Action; pages 10-12).

While Barr discloses that its system can impose "payment authority levels" on its staff members (see Barr; col. 29, line 7; Table XXVI), Barr is silent with respect the concept of qualifying such a payment authority level to limit the amount of payments the staff member can make <u>over a specified time period</u>, as required by claims 108 and 130. While Barr discloses that a staff member's "diary limit" can be measured on a "per day" basis, Applicant notes that such diary limits and/or diary rollover limits do not relate to the staff member's payment authority, but rather to the scheduled deadlines for taking action on various assignments. (See Barr; col. 4, lines 42-48 (explaining how the diary limits relate to tolerances for notifying a staff member's supervisor when the staff member misses too many deadlines)). Thus, Applicant notes the Examiner cites to no passage in Barr which indicates that payment authority levels assigned to each staff member should be measured and evaluated over a specified time period, as required by claims 108 and 130. Accordingly, Applicant respectfully submits that the Examiner has failed to set forth how the Barr reference in combination with the other cited references renders obvious the concept of system which imposes a financial commitment dollar limit that a user can make on rental vehicle reservations <u>over a specified time period</u>, thereby rendering the obviousness rejections of claims 128 and 130 improper.

**viii.   Claims Appendix:**

1-95:  CANCELED


96.    An Internet-enabled rental vehicle reservation management system, the system

comprising:

an Internet web portal in communication with the Internet, wherein the Internet web

portal is configured for access by an authorized purchaser computer via the Internet to provide

a user of the authorized purchaser computer with an ability to book a rental vehicle reservation

with any of a plurality of competitive rental vehicle service providers, wherein the Internet web

portal is further configured to provide a plurality of graphical user interface (GUI) menus to the

authorized purchaser computer for display thereon, wherein at least one of the GUI menus is

configured to accept a selection by the user as to which one of the plurality of competitive

rental vehicle service providers that a rental vehicle reservation is to be booked with, and

wherein the Internet web portal is further configured to transmit the rental vehicle reservation

to the selected one of the competitive rental vehicle service providers;

a computer network operated by one of the competitive rental vehicle service providers,

the computer network being in communication with the Internet web portal, the computer

network comprising a mainframe that is configured to execute a rental vehicle software

program;

wherein at least one of the GUI menus is configured to interface a user of the

authorized purchaser computer with the rental vehicle software program; and

wherein the rental vehicle software program is configured to (1) automatically book, in

response to input from the user, a rental vehicle reservation with the competitive rental vehicle

service provider that operates the computer network without human intervention on the part of personnel of the competitive rental vehicle service provider that operates the computer network and (2) manage the booked rental vehicle reservation in response to input from the user.

97.    The system of claim 96 wherein the mainframe comprises a first mainframe, and wherein the computer network further comprises:

a second mainframe in communication with the first mainframe;

a database in which rental vehicle reservation data is stored, wherein the database is in communication with the second mainframe; and

a plurality of branch office computers of the competitive rental vehicle service provider that operates the computer network, wherein the plurality of branch office computers are in communication with the second mainframe; and

wherein the second mainframe is configured to execute a software program for access by the branch office computers to fulfill rental vehicle reservations that are stored within the database and that were booked and managed by the rental vehicle software program in response to input from the user.

98.    The system of claim 97 wherein the Internet web portal is further configured to transmit a rental vehicle reservation to a different one of the selected competitive rental vehicle service providers via email over the Internet.

99.   The system of claim 97 wherein the Internet web portal is further configured to transmit a rental vehicle reservation to a different one of the selected competitive rental vehicle service providers via phone.

100.   The system of claim 97 wherein the Internet web portal is further configured to transmit a rental vehicle reservation to a different one of the selected competitive rental vehicle service providers via facsimile.

101.   The system of claim 97 further comprising a second one of the computer networks, wherein the second one of the computer networks is operated by a different one of the competitive rental vehicle service providers.

102.   The system of claim 97 wherein the Internet web portal is configured for access by a plurality of authorized purchaser computers, and wherein the Internet web portal is further configured to customize the GUI menus on a per authorized purchaser computer user basis.

103.   The system of claim 97 wherein the Internet web portal is configured to provide a user of the authorized purchaser computer with a single set of GUI menus for booking a rental vehicle reservation with all of the competitive rental vehicle service providers.

104.   The system of claim 103 wherein the Internet web portal is further configured to accommodate a plurality of varying data requirements for rental vehicle reservations with the competitive rental vehicle service providers.

105.    The system of claim 97 wherein the rental vehicle software program is further configured to support a plurality of management functions by the user for a rental vehicle reservation, the management functions comprising a rental vehicle reservation extension by the user, an authorization by the user of a request for a rental vehicle reservation extension requested by someone other than the user, an authorization by the user for a rental vehicle reservation booked by someone other than the user, and a change in rental vehicle reservation authorization by the user.

106.    The system of claim 105 wherein the Internet web portal is configured for access by a plurality of authorized purchaser computers belonging to a common business organization, and wherein the Internet web portal is further configured to provide a GUI menu for display on the authorized purchaser computers that presents each user with an action item list that identifies a plurality of management function actions for rental vehicle reservations that have been assigned to the user, and wherein the Internet web portal is further configured to create a plurality of workgroups of users, wherein each workgroup shares a workload of management function actions.

107.    The system of claim 97 wherein the Internet web portal is configured for access by a plurality of authorized purchaser computers, and wherein the Internet web portal is further configured to assign each user of the authorized purchaser computers with an authorization limit that limits an extent of functionality available to each user when managing a rental vehicle reservation through the rental vehicle software program.

108.    The system of claim 107 wherein the authorization limit includes a financial commitment dollar limit that a user can make on rental vehicle reservations over a specified time period.

109.    The system of claim 97 further comprising a layer of computer architecture that interconnects the Internet web portal with the Internet, the computer architecture layer comprising a plurality of networked servers and a firewall, wherein the firewall connects the Internet web portal with the plurality of networked servers, and wherein the plurality of networked servers are configured to provide order to data communications to and from the Internet.

110.    The system of claim 109 wherein the firewall comprises a first firewall, and wherein the first architecture layer comprises a second firewall that connects the plurality of networked servers to the Internet.

111.    The system of claim 110 wherein the Internet web portal comprises a plurality of networked web servers within a second computer architecture layer.

112.    The system of claim 96 further comprising a second one of the computer networks, wherein the second one of the computer networks is operated by a different one of the competitive rental vehicle service providers.

113.    A method for creating and managing a plurality of rental vehicle reservations, the method comprising:

providing an Internet web portal in communication with an authorized purchaser computer via the Internet;

providing a user of the authorized purchaser computer with an option through the Internet web portal to select a rental vehicle service provider with which to book a rental vehicle reservation from among a plurality of competitive rental vehicle service providers, wherein at least one of the competitive rental vehicle service providers maintains a computer network in communication with the Internet web portal, wherein the computer network comprises a rental vehicle software program;

in response to a selection by the user of a competitive rental vehicle service provider that maintains the computer network, (1) interfacing the user with the rental vehicle software program via a plurality of graphical user interface (GUI) menus that are displayed on the authorized purchaser computer, (2) receiving input at the Internet web portal from the user through the GUI menus, (3) in response to the received input, providing a series of commands to the rental vehicle software program, and (4) executing the rental vehicle software program in response to the series of commands to thereby (a) automatically book a rental vehicle reservation with the competitive rental vehicle service provider that maintains the computer network without human intervention on the part of personnel of the competitive rental vehicle service provider that maintains the computer network and (b) manage the booked rental vehicle reservation; and

in response to a selection by the user of a different competitive rental vehicle service provider, transmitting a rental vehicle reservation from the user to the selected different competitive rental vehicle service provider through the Internet web portal.

114.    The method of claim 113 wherein the rental vehicle reservation comprises a replacement rental vehicle reservation.

115.    The method of claim 114 wherein the authorized purchaser comprises business organization that books and manages replacement rental vehicle reservations on behalf of a plurality of third party renters.

116.    The method of claim 115 wherein the business organization comprises an insurance company.

117.    The method of claim 116 wherein the user comprises an insurance adjuster.

118.    The method of claim 116 wherein the computer network further comprises a first mainframe that executes the rental vehicle reservation software program, a second mainframe in communication with the first mainframe, and a plurality of branch office computers within a plurality of branch offices of the competitive rental vehicle service provider that maintains the computer network, wherein the plurality of branch office computers are in communication with the second mainframe; the method further comprising:

executing software resident on the second mainframe to (1) retrieve a rental vehicle

reservation booked and managed through the rental vehicle software program and (2) process

the retrieved rental vehicle reservation for fulfillment at one of the branch offices when the

third party picks up a rental vehicle in accordance with the rental vehicle reservation.


119.    The method of claim 118 wherein the transmitting step comprises transmitting a rental

vehicle reservation from the user to the selected different competitive rental vehicle service

provider through the Internet web portal via email over the Internet.


120.    The method of claim 118 wherein the transmitting step comprises transmitting a rental

vehicle reservation from the user to the selected different competitive rental vehicle service

provider through the Internet web portal via phone.


121.    The method of claim 118 wherein the transmitting step comprises transmitting a rental

vehicle reservation from the user to the selected different competitive rental vehicle service

provider through the Internet web portal via facsimile.


122.    The method of claim 118 wherein computer network comprises a first computer

network, and wherein the selected different competitive rental vehicle service provider also

maintains its own computer network with the same functionality as the first computer

network such that the user can also book and manage a rental vehicle reservation with the

selected different competitive rental vehicle service provider through a rental vehicle software

program maintained by the selected different competitive rental vehicle service provider.

123. The method of claim 118 wherein the Internet web portal is in communication with a plurality of different authorized purchaser computers, wherein the option providing step comprises providing the option to the users of the different authorized purchaser computers, and wherein the method further comprises:

      customizing the GUI menus on a per user basis.

124. The method of claim 123 wherein the users comprise users from different insurance companies.

125. The method of claim 118 further comprising:

      providing the user with a single set of GUI menus through the Internet web portal for booking a rental vehicle reservation with all of the competitive rental vehicle service providers.

126. The method of claim 125 further comprising:

      accommodating through the Internet web portal a plurality of varying data requirements for rental vehicle reservations with the competitive rental vehicle service providers.

127. The method of claim 118 wherein the rental vehicle software program executing step comprises performing a plurality of user-specified management functions for a plurality of rental vehicle reservations, the user-specified management functions comprising a rental vehicle reservation extension by the user, an authorization by the user of a request for a rental vehicle reservation extension requested by someone other than the user, an authorization by

the user for a rental vehicle reservation booked by someone other than the user, and a change in rental vehicle reservation authorization by the user.

128.    The method of claim 127 wherein the Internet web portal is configured for access by a plurality of authorized purchaser computers belonging to a common business organization, the method further comprising:

creating and administering a plurality of workgroups, wherein each workgroup comprises a plurality of users, and wherein each workgroup shares a workload of management functions for rental vehicle reservations among its users; and

providing a GUI menu for display on the authorized purchaser computers through the Internet web portal that presents each user with an action item list that identifies a plurality of management function actions for rental vehicle reservations that have been assigned to the user's workgroup.

129.    The method of claim 118 wherein the Internet web portal is configured for access by a plurality of authorized purchaser computers, the method further comprising:

assigning each user of the authorized purchaser computers with an authorization limit that limits an extent of functionality available to each user when managing a rental vehicle reservation through the rental vehicle software program.

130.    The method of claim 129 wherein the authorization limit assigning step comprises imposing a financial commitment dollar limit that a user can make on rental vehicle reservations over a specified time period.

131.    The method of claim 118 wherein the Internet web portal is maintained by the same competitive rental vehicle service provider that maintains the computer network.

132.    The method of claim 131 further comprising:

positioning the Internet web portal behind a firewall maintained by the same competitive rental vehicle service provider that maintains the computer network, wherein the Internet web portal is in communication with the Internet via the firewall.

133.    The method of claim 118 further comprising:

providing a layer of computer architecture that interconnects the Internet web portal with the Internet, the computer architecture layer comprising a plurality of networked servers and a firewall, wherein the firewall connects the Internet web portal with the plurality of networked servers, and wherein the plurality of networked servers are configured to provide order to data communications to and from the Internet.

134.    The method of claim 133 wherein the computer architecture layer and the Internet web portal are maintained by the same competitive rental vehicle service provider that maintains the computer network.

135.    The method of claim 134 wherein computer architecture layer providing step further comprises providing another firewall, the another firewall connecting the plurality of networked servers to the Internet.

136. The method of claim 134 wherein the Internet web portal providing step comprises a configuring a plurality of networked web servers to serve as the Internet web portal.

ix.     **Evidence Appendix:**

Enclosed herewith as Exhibits A-C, respectively, are copies of the "Declaration B of David Smith", "Declaration of Russell Dittmar", and the IBM/Ims reference (cited and discussed in the "Declaration of Russell Dittmar"). The entry of these items into the record is reflected in Applicant's Office Action response dated March 30, 2004 (for Exhibit A) and Applicant's Office Action response dated March 31, 2003 (for Exhibits B and C).

Enclosed herewith as Exhibits D-G, respectively, are copies of the Walker, "Many Ways to Sell", Brandt, and Barr references cited by the Examiner in the April 5,2007 Office Action.
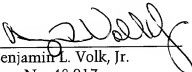
x.    **Related Proceedings Appendix:**

    As indicated above, no decisions have been rendered to date by the court in the cases referenced above at Section ii.

    For the foregoing reasons, Applicant respectfully submits that the Examiner's rejections as to all pending claims in this patent application are in error and must be reversed. Favorable action is respectfully requested.

                           Respectfully submitted,

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